

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUBREY LEE CHRISTIAN,

Plaintiff,

v.

Civil Action No. 12-11113

HONORABLE DENISE PAGE HOOD

ASTRAZENECA LP, SANDRA
VONDEREMBSE, M.D. and MDOC
HEALTH SERVICES DIVISION,

Defendants.

ORDER ACCEPTING REPORT AND RECOMMENDATION,
GRANTING MOTION TO DISMISS BY ASTRAZENECA,
DISMISSING ACTION WITH PREJUDICE, and
DENYING ANY APPEAL TO PROCEED IN FORMA PAUPERIS

This matter is before the Court on Magistrate Judge Charles E. Binder's Report and Recommendation filed May 22, 2012 [Doc. # 18]. The time to file Objections has passed and no Objections have been filed to date.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.* In order to preserve the right to appeal the Magistrate Judge's recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). As Plaintiff filed the complaint *pro*

se, the Court will interpret his pleadings liberally. *Hughes v. Rowe*, 499 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

After review of the Magistrate Judge's Report and Recommendation, the Court finds that his findings and conclusions are correct. The Court agrees with the Magistrate Judge that Plaintiff has failed to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) against Defendant AstraZeneca under Michigan's product liability statute, M.C.L.A. § 600.2946(5). The Court also agrees with the Magistrate Judge that this Court lacks subject matter jurisdiction over the state law medical malpractice claim since there is no federal question involved and there is no diversity of citizenship between Plaintiff and Defendant Vonderembse. As to Defendant MDOC, the Court agrees with the Magistrate Judge that as an agency or department of the State of Michigan, Defendant MDOC is entitled to immunity under the Eleventh Amendment.

The Court has liberally construed and reviewed Plaintiff's original Complaint and Amended Complaint under the screening requirement set forth in the Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e, and 28 U.S.C. §§ 1915(e)(2) and 1915A. For the reasons set forth above and in the Magistrate Judge's Report and Recommendation, the action must be dismissed with prejudice.

Accordingly,

IT IS ORDERED that the Magistrate Judge Charles E. Binder's Report and Recommendation [Doc. # 18, 5/22/2012] is ACCEPTED and ADOPTED as this Court's findings of facts and conclusions of law.

IT IS FURTHER ORDERED that the Motion to Proceed *In Forma Pauperis* [Doc. # 2, 3/13/2012] is MOOT since the motion was granted in the Western District of Michigan proceedings [Doc. # 5, Docket Sheet, W.D. Case No. 12-00081, Doc. # 17].

IT IS FURTHER ORDERED that Defendant AztraZeneca's Motion to Dismiss [**Doc. #12, 4/12/2012**] is GRANTED.

IT IS FURTHER ORDERED that all Defendants are DISMISSED and this action is DISMISSED with prejudice.

IT IS FURTHER ORDERED and certified that any appeal from this decision would be frivolous and not taken in good faith. An appeal may not be taken *in forma pauperis* under 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962), *McGore v. Wigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

DATED: June 29, 2012

s/Denise Page Hood
DENISE PAGE HOOD
United States District Judge

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, June 29, 2012, by electronic and/or ordinary mail.

s/Tanya Bankston for LaShawn Saulsberry
Case Manager, (313) 234-5160